



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2019-0155; FRL-9997-30-Region 4]**

**Air Plan Approval; Kentucky: Cross-State Air Pollution Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Kentucky State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) submitted by Kentucky on September 14, 2018, as later clarified on December 18, 2018. Under CSAPR, large electricity generating units (EGUs) in Kentucky are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>), one of CSAPR's two federal trading programs for ozone season emissions of NO<sub>x</sub>, and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>). This action proposes to approve into the SIP the Commonwealth's regulations requiring large Kentucky EGUs to participate in CSAPR state trading programs for ozone season NO<sub>x</sub> emissions, annual NO<sub>x</sub> emissions, and annual SO<sub>2</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. EPA is proposing to approve the SIP revision concerning these CSAPR state trading programs because the SIP revision meets the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of this SIP revision

would automatically eliminate Kentucky units' obligations to participate in CSAPR's federal trading programs for ozone season NO<sub>x</sub> emissions, annual NO<sub>x</sub> emissions, and annual SO<sub>2</sub> emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS), the 1997 8-hour ozone NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS. Approval of the SIP revision would also satisfy Kentucky's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0155 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public

comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached by telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary**

EPA is proposing to approve the September 14, 2018,<sup>1</sup> revisions to the Kentucky SIP concerning CSAPR<sup>2</sup> trading programs for ozone season emissions of NO<sub>x</sub> and annual emissions of NO<sub>x</sub> and SO<sub>2</sub>. Large EGUs in Kentucky are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, federal CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program. CSAPR also provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR federal trading programs.

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<sup>1</sup> The Commonwealth originally requested EPA to fully approve good neighbor CAA transport obligations pursuant to CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, the 2010 nitrogen dioxide (NO<sub>2</sub>) NAAQS and the 2010 SO<sub>2</sub> NAAQS. However, CSAPR does not address transport for the 2010 1-hour NO<sub>2</sub> or SO<sub>2</sub> NAAQS. Therefore, the Commonwealth submitted a clarifying letter on December 18, 2018, to instead request that EPA approve its transport obligations for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, the 2006 PM<sub>2.5</sub> NAAQS, and the 2008 ozone NAAQS.

<sup>2</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

The SIP revision proposed for approval would incorporate into Kentucky's SIP state trading program regulations for ozone season NO<sub>x</sub> and annual NO<sub>x</sub> and SO<sub>2</sub> emissions that would replace EPA's federal trading program regulations for those emissions for the Commonwealth's units.<sup>3</sup> EPA is proposing to approve this SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program. Under the CSAPR regulations, approval of this SIP revision would automatically eliminate the obligations of large EGUs in Kentucky to participate in CSAPR's federal trading programs for ozone season NO<sub>x</sub> and annual NO<sub>x</sub> and SO<sub>2</sub> emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of this SIP revision would satisfy Kentucky's obligations pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS in any other state.

Section II of this document summarizes relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Kentucky's SIP submittal. Section V addresses incorporation by reference, and Section VI sets

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<sup>3</sup> Under Kentucky's regulations, the Commonwealth will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program. *See* sections III and IV.B.2, below.

forth EPA's proposed action on the submittal. Section VII addresses statutory and Executive Order reviews.

## **II. Background on CSAPR and CSAPR-related SIP revisions**

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including the 2016 CSAPR Update),<sup>4</sup> CSAPR requires 27 Eastern states to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 (and CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: a program for annual NO<sub>x</sub> emissions, two geographically separate programs for annual SO<sub>2</sub> emissions, and two geographically separate programs for ozone-season NO<sub>x</sub> emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. Currently, the CSAPR FIP provisions require each state's units to participate in

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<sup>4</sup> See 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NO<sub>x</sub> budgets promulgated with respect to the 1997 ozone NAAQS. See 81 FR at 74505. The CSAPR Update established new emission reduction requirements addressing the more recent NAAQS and coordinated them with the remaining emission reduction requirements addressing the older NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NO<sub>x</sub> emissions covering EGUs in a total of 23 states. See 40 CFR 52.38(b)(1)-(2).

up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.<sup>5</sup> Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units.<sup>6</sup> If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years (or 2019 or later years in the case of the CSAPR

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<sup>5</sup> See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

<sup>6</sup> States covered by both the CSAPR Update and the NO<sub>x</sub> SIP Call have the additional option to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program to include non-electric generating units that would have participated in the former NO<sub>x</sub> Budget Trading Program.

NOx Ozone Season Group 2 Trading Program).<sup>7</sup> Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section IV below. Under the first alternative – an “abbreviated” SIP revision – a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.<sup>8</sup> Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state’s units.

Under the second alternative – a “full” SIP revision – a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.<sup>9</sup> For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA’s approval of a full SIP revision as correcting the deficiency in the state’s implementation plan that was the basis for a particular

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<sup>7</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 in the case of the CSAPR NOx Ozone Season Group 2 Trading Program) and is not relevant here. See 40 CFR 52.38(a)(3), (b)(3), (b)(7); 52.39(d), (g).

<sup>8</sup> See 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

<sup>9</sup> See 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.<sup>10</sup> Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.<sup>11</sup>

Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.<sup>12</sup>

### **III. Conditions for approval of CSAPR-related SIP revisions**

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 apply. In addition, if a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal

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<sup>10</sup> See 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

<sup>11</sup> See 40 CFR 52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(9)(vi)-(vii), (b)(10)(i); 52.39(f)(4)-(5), (i)(4)-(5), (j).

<sup>12</sup> See 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).



trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.<sup>13</sup> This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the federal program's default allocations to existing units<sup>14</sup> at 40 CFR 97.411(a), 97.511(a), 97.611(a), 97.711(a), or 97.811(a), as applicable, and the federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), 97.711(b)(1) and 97.712(a), or 97.811(b)(1) and 97.812(a), as applicable.<sup>15</sup> In the case of a state with Indian country

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<sup>13</sup> See 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii), (b)(8)(iv), (b)(9)(viii); 52.39(e)(2), (f)(6), (h)(2), (i)(6).

<sup>14</sup> In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. Spreadsheets showing EPA's default allocations to existing units are posted at <https://www.epa.gov/csapr/unit-level-allocations-under-csapr-transport-rule-fips-after-tolling> and <https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update>.

<sup>15</sup> See 40 CFR 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii), (b)(8)(iii), (b)(9)(iii); 52.39(e)(1), (f)(1), (h)(1), (i)(1).

within its borders, while the SIP revision may neither alter nor assume the federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.<sup>16</sup>

- *Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) generally may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.<sup>17</sup> Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder. Under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-electric generating units that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>18</sup>
- *Timely submission of state-determined allocations to EPA.* The SIP revision must require

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<sup>16</sup> See 40 CFR 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii), 97.812(b)(10)(ii).

<sup>17</sup> 40 CFR 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A), (b)(8)(iii)(A), (b)(9)(iii)(A); 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

<sup>18</sup> See 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.<sup>19</sup> Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

<b>CSAPR NO<sub>x</sub> Annual, CSAPR NO<sub>x</sub> Ozone Season Group 1, CSAPR SO<sub>2</sub> Group 1, and CSAPR SO<sub>2</sub> Group 2 Trading Programs:</b>		
<b>Units</b>	<b>Year of the Control Period</b>	<b>Deadline for Submission to EPA of Allocations or Auction Results</b>
Existing	2017 and 2018	June 1, 2016
	2019 and 2020	June 1, 2017
	2021 and 2022	June 1, 2018
	2023 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

<b>CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program:</b>		
<b>Units</b>	<b>Year of the Control Period</b>	<b>Deadline for Submission to EPA of Allocations or Auction Results</b>
Existing	2019 and 2020	June 1, 2018
	2021 and 2022	June 1, 2019
	2023 and 2024	June 1, 2020
	2025 and later years	June 1 of the fourth year before the year of the control period
Other	All years	July 1 of the year of the control period

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must

<sup>19</sup> See 40 CFR 52.38(a)(4)(i)(B)-(C), (a)(5)(i)(B)-(C), (b)(4)(ii)(B)-(C), (b)(5)(ii)(B)-(C), (b)(8)(iii)(B)-(C), (b)(9)(iii)(B)-(C); 52.39(e)(1)(ii)-(iii), (f)(1)(ii)-(iii), (h)(1)(ii)-(iii), (i)(1)(ii)-(iii).

not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.<sup>20</sup>

- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.<sup>21</sup> Any new definitions adopted in the SIP revision (in addition to the federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.<sup>22</sup>

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NOx Ozone Season Group 1 or CSAPR NOx Ozone Season Group 2 Trading Programs (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be

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<sup>20</sup> See 40 CFR 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D), (b)(8)(iii)(D), (b)(9)(iii)(D); 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

<sup>21</sup> See 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).

<sup>22</sup> See 40 CFR 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii), (b)(8)(iii), (b)(9)(iv); 52.39(e)(1), (f)(2), (h)(1), (i)(2).

less than 15 MWe.<sup>23</sup> In addition or alternatively, applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program may be expanded to non-electric generating units that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>24</sup>

- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.<sup>25</sup>

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, 97.702 through 97.735, or 97.802 through 97.835, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.<sup>26</sup>
- *Only non-substantive substitutions for the term “State.”* The SIP revision may substitute the name of the state for the term “State” as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not

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<sup>23</sup> See 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

<sup>24</sup> See 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).

<sup>25</sup> See 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

<sup>26</sup> See 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

substantively change the trading program regulations.<sup>27</sup>

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not impose requirements on any unit in any Indian country within the state's borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.<sup>28</sup>

#### **IV. Kentucky's SIP submittal and EPA's analysis**

##### *A. Kentucky's Submittal*

In CSAPR and the CSAPR Update, EPA found that air pollution transported from Kentucky unlawfully affects other states' ability to attain or maintain the 1997 8-hour ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS. As discussed below, Kentucky's submittal addresses each of these NAAQS.

In the 2011 CSAPR rulemaking, among other findings, EPA determined that air pollution transported from Kentucky would unlawfully affect other states' ability to attain and maintain the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS, established annual NO<sub>x</sub> and SO<sub>2</sub> budgets for Kentucky's EGUs representing full remedies for the Commonwealth's interstate transport obligations with respect to these NAAQS, and implemented the budgets by including the EGUs in annual NO<sub>x</sub> and SO<sub>2</sub> trading programs.<sup>29</sup> Consequently, Kentucky's units meeting the CSAPR applicability criteria are currently subject to CSAPR FIPs that require participation in the CSAPR NO<sub>x</sub> Annual Trading Program and the CSAPR SO<sub>2</sub> Group 1 Trading Program in order to address, in full, the Commonwealth's interstate transport obligations with

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<sup>27</sup> See 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

<sup>28</sup> See 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

<sup>29</sup> See 76 FR at 48209-13.

respect to both the 1997 annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>30</sup>

In the 2011 CSAPR rulemaking, EPA also determined that air pollution transported from Kentucky would unlawfully affect other states' ability to attain or maintain the 1997 8-hour ozone NAAQS, established an ozone season NO<sub>x</sub> budget for Kentucky's EGUs representing a partial remedy for the Commonwealth's interstate transport obligations with respect to that NAAQS, and implemented the budget by including the EGUs in an ozone season NO<sub>x</sub> trading program.<sup>31</sup> Later, in the 2016 CSAPR Update rulemaking, using updated data and analyses, EPA determined that air pollution transported from Kentucky would unlawfully affect other states' ability to maintain the 2008 8-hour ozone NAAQS, established an ozone season NO<sub>x</sub> budget for Kentucky's EGUs representing a partial remedy for the Commonwealth's interstate transport obligations with respect to that NAAQS, and implemented the budget by including the units in a new ozone season NO<sub>x</sub> trading program.<sup>32</sup> Also in the CSAPR Update rulemaking, EPA determined that Kentucky's previous ozone season NO<sub>x</sub> budget established in the 2011 CSAPR rulemaking as a partial remedy for the Commonwealth's interstate transport obligations with respect to the 1997 8-hour ozone NAAQS now represents a full remedy with respect to that NAAQS<sup>33</sup> and coordinated compliance requirements by allowing compliance with the new CSAPR Update budget to serve the purpose of addressing the Commonwealth's obligations with respect to the 1997 and 2008 8-hour ozone NAAQS.<sup>34</sup> Most recently, in a 2018 action approving a revision to Kentucky's SIP, based on further updated data and analyses, EPA determined that

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<sup>30</sup> See 40 CFR 52.38(a)(2); 52.39(b); 52.940(a); 52.941(a).

<sup>31</sup> See 76 FR at 48209-13.

<sup>32</sup> See 81 FR at 74507-09.

<sup>33</sup> *Id.* at 74525.

<sup>34</sup> *Id.* at 74563 n.169.

Kentucky's ozone season NO<sub>x</sub> budget established in the 2016 CSAPR Update rulemaking as a partial remedy for the Commonwealth's interstate transport obligations with respect to the 2008 8-hour ozone NAAQS now represents a full remedy with respect to that NAAQS.<sup>35</sup>

Consequently, Kentucky units meeting the CSAPR applicability criteria are currently subject to CSAPR Update FIP requirements for participation in the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program in order to address, in full, the Commonwealth's interstate transport obligations with respect to both the 1997 8-hour ozone NAAQS and the 2008 8-hour ozone NAAQS.<sup>36</sup>

If approved, Kentucky's September 14, 2018, SIP submission would incorporate into the SIP CSAPR state trading program regulations implementing the CSAPR and CSAPR Update emissions budgets for Kentucky units' ozone season NO<sub>x</sub>, annual SO<sub>2</sub>, and annual NO<sub>x</sub> emissions, thereby fully addressing through SIP provisions the Commonwealth's interstate transport obligations with respect to the 1997 8-hour ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS. As described in section II, pursuant to the CSAPR regulations, full and unconditional approval of the SIP revision by EPA would therefore automatically eliminate Kentucky EGU's obligations under the CSAPR and CSAPR Update FIPs to participate in the CSAPR federal trading programs.<sup>37</sup>

The SIP submittal includes the addition of the following Kentucky Administrative Regulations: 401 KAR 51:240 "Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program," 401 KAR 51:250 "Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> ozone season group 2 trading program," and 401 KAR 51:260 "Cross-State Air Pollution Rule (CSAPR) SO<sub>2</sub> group 1

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<sup>35</sup> 83 FR 33730, 33759 (July 17, 2018).

<sup>36</sup> See 40 CFR 52.38(b)(2)(iii); 52.940(b)(2).

<sup>37</sup> See 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).



trading program.” In general, Kentucky’s CSAPR state trading program rules are designed to replace the corresponding federal trading program regulations. For example, 401 KAR 51:240 “Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program” is designed to replace subpart AAAAAA of 40 CFR part 97 (i.e., 40 CFR 97.401 through 97.435).

With regard to form, the CSAPR state trading program rules generally incorporate the corresponding federal trading program section or sections by reference, with a few exceptions.

With regard to content, the rules for each Kentucky CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in two main ways, as further described below. First, the applicability provisions in the Kentucky rules require participation in Kentucky CSAPR state trading programs only for units in Kentucky, not for units in any other state or in Indian country within the borders of Kentucky or any other state. Second, the Kentucky rules omit some federal trading program provisions not applicable to Kentucky’s state trading programs, including provisions setting forth the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states and provisions relating to EPA’s administration of Indian country NUSAs.

The September 14, 2018, SIP revisions were submitted to EPA by a letter from the Secretary of the Kentucky Energy and Environment Cabinet, as clarified in a subsequent December 18, 2018, letter. The letter and enclosures describe steps taken by Kentucky to provide public notice prior to adoption of the state rules.

*B. EPA’s analysis of Kentucky’s submittal*

At this time, EPA is proposing to take action on Kentucky SIP submissions, which are designed to replace the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, federal

CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program with regard to Kentucky units.

*1. Timeliness and completeness of submittal*

Kentucky submitted the SIP revisions to EPA on September 14, 2018, and EPA has determined that the submittals comply with the applicable minimum completeness criteria in section 2.3 of appendix V to 40 CFR part 51. The SIP submission deadline specified in 40 CFR 52.38(a)(5)(vi), 52.38(b)(9)(viii), and 52.39(f)(6) is defined with reference to certain separate CSAPR deadlines for submission of state-determined allowance allocations to EPA and is therefore inoperative in the case of a SIP revision that does not seek to replace the EPA-administered allowance allocation methodology and process set forth in the federal trading program rules. Because Kentucky is seeking to replace the federal trading program rules with substantively identical state trading program rules and is not seeking to replace the EPA-administered allowance allocation methodology and process, the SIP submission deadline does not apply.<sup>38</sup>

*2. Complete, substantively identical trading program provisions*

The Kentucky rules adopt state budgets identical to the Ozone Season Group 2 NO<sub>x</sub> budgets and the Phase 2 NO<sub>x</sub> Annual and SO<sub>2</sub> Group 1 budgets for Kentucky under the federal trading programs. The Kentucky rules also adopt almost all of the provisions of the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, federal CSAPR NO<sub>x</sub> Annual Trading Program and federal CSAPR SO<sub>2</sub> Group 1 Trading Program, including the default allowance allocation provisions. Under the Commonwealth's rules, EPA would administer the programs

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<sup>38</sup> See 40 CFR 52.38(a)(5)(vi), 52.38(b)(9)(viii), and 52.39(f)(6).

and would retain the authority to allocate allowances.

With the following exceptions, the Kentucky rules comprising Kentucky's CSAPR state trading program for ozone season NO<sub>x</sub> emissions incorporate by reference all of the provisions of 40 CFR 97.801 through 97.835, the rules comprising the state program for annual NO<sub>x</sub> emissions incorporate by reference all of the provisions of 40 CFR 97.401 through 97.435, and the rules comprising the state program for SO<sub>2</sub> emissions incorporate by reference all of the provisions of 40 CFR 97.601 through 97.635.

The first exception is that, as discussed subsequently in section IV.B.3, 401 KAR 51:240, Section 2, 401 KAR 51:250, Section 2, and 401 KAR 51:260, Section 2, of the Kentucky rules limit applicability of the rules to units located in Kentucky. This modification of the applicability provisions in the federal trading program rules is appropriate for state trading program rules which necessarily must be designed to apply only to sources subject to the state's jurisdiction.

The second exception is that the Kentucky rules do not incorporate the complete provisions of 40 CFR 97.410, 97.810, and 97.610 concerning the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for the three CSAPR federal trading programs. Instead, Kentucky rules 401 KAR 51:240, Section 3(7), 401 KAR 51:250, Section 3(7), and 401 KAR 51:260, Section 3(7) adopt full-text replacement provisions specifying (and describing the relationships among) the emissions budget, NUSA, and variability limit amounts for the three trading programs only as applicable to Kentucky units and only for control periods occurring after 2016. The full-text replacement provisions adopted by Kentucky are substantively identical to the provisions of the respective federal rules that would apply to

Kentucky units after 2016. For purposes of Kentucky's state trading program rules, which apply only to Kentucky units and only starting in 2018, the omission of provisions of the corresponding federal rules that apply to units located in other states or Indian country and provisions that applied to Kentucky units only for control periods before 2017 is not a substantive change from the federal trading program regulations.

The third exception is that Kentucky rules 401 KAR 51.240, 51.250, and 51.260 omit 40 CFR 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.811(b)(2), 97.811(c)(5)(iii), 97.812(b), 97.821(h), 97.821(j), 97.611(b)(2), 97.611(c)(5)(iii), 97.612(b), 97.621(h), and 97.621(j), concerning EPA's administration of Indian country NUSAs. Omission of these provisions from Kentucky's state trading program rules is required, as discussed in section IV.B.4.

The final exception is that, only for purposes of units located in the Commonwealth, Kentucky rules 401 KAR 51.240, Section 1(2), 401 KAR 51.250, Section 1(2), and 401 KAR 51.260, Section 1(2), define the term "Permitting Authority" as the Kentucky Energy and Environmental Cabinet. The definition in the federal trading program regulations is not altered with respect to units located in other states or Indian country. Because the term "permitting authority" in the federal trading program regulations is intended to reference the appropriate permitting authority for each unit under 40 CFR part 70 or part 71, the definition in Kentucky's rules merely adds specificity without causing a substantive change.

None of the omissions undermine the completeness of Kentucky's state trading program regulations, and EPA has determined that Kentucky's proposed SIP revision makes no substantive changes to the provisions of the federal trading program regulations. Thus,

Kentucky's SIP revision meets the condition under 40 CFR 52.38(a)(5), 52.38(b)(9), and 52.39(f) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 40 CFR 97.802 through 97.835, and 97.602 through 97.635, respectively, except to the extent permitted in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.

3. *Only non-substantive substitutions for the term "State"*

401 KAR 51:240, Section 3(2)(b), 401 KAR 51:250, Section 3(2)(b), and 401 KAR 51:260, Section 3(2)(b) of the Kentucky rules substitute the phrase "in Kentucky," for the phrase "in a State (and Indian country within the borders of such State)" in the corresponding federal trading program regulations at 40 CFR 97.404(a)(1) and (b), 97.804(a)(1) and (b), and 97.604(a)(1) and (b), respectively. These provisions of the Kentucky rules define the units that are required to participate in Kentucky's CSAPR state trading programs. The substitutions appropriately exclude all units located in other states or in Indian country within the borders of any state, thereby limiting the applicability of Kentucky's state trading programs to units that are subject to Kentucky's jurisdiction. These substitutions do not substantively change the provisions of CSAPR's federal trading program regulations. The remaining Kentucky rules do not substitute for the term "State" as used in the federal trading program regulations. Kentucky's SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(iii), 52.38(b)(9)(v), and 52.39(f)(3) that the SIP revision may substitute the name of the state for the term "State" as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the provisions of the federal trading program

regulations.

*4. Exclusion of provisions addressing Indian country*

As discussed above in section IV.B.3, paragraphs 401 KAR 51:240, Section 3(2)(b), 401 KAR 51:250, Section 3(2)(b), and 401 KAR 51:260, Section 3(2)(b) of the Kentucky rules do not include units in Indian country within Kentucky's borders in the applicable requirements of the Commonwealth's rules. In addition, as required under 40 CFR 52.38(a)(5)(iv), 52.38(b)(9)(vi), and 52.39(f)(4), Kentucky's SIP revisions exclude federal trading program provisions related to EPA's process for allocating and recording allowances from Indian country NUSAs (i.e., 40 CFR 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.811(b)(2), 97.811(c)(5)(iii), 97.812(b), 97.821(h), 97.821(j), 97.611(b)(2), 97.611(c)(5)(iii), 97.612(b), 97.621(h), and 97.621(j)). Kentucky's SIP revision therefore meets the conditions under 52.38(a)(5)(iv), 52.38(b)(9)(vi), and 52.39(f)(4) that a SIP submittal must not impose any requirement on any unit in Indian country within the borders of the Commonwealth and must exclude certain provisions related to administration of Indian country NUSAs.

**V. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Kentucky Regulations 401 KAR 51:240, entitled "Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program"; 401 KAR 51:250, entitled "Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> ozone season group 2 trading program"; and 401 KAR 51:260, entitled "Cross-State Air Pollution Rule SO<sub>2</sub> (CSAPR) group 1 trading program." The rules became state-effective as of July 5, 2018. EPA has made, and will continue

to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **VI. Proposed Action**

EPA is proposing to approve Kentucky’s September 14, 2018, SIP submittals concerning the establishment for Kentucky units of CSAPR state trading programs for ozone season NO<sub>x</sub> emissions and annual NO<sub>x</sub> and SO<sub>2</sub> emissions. The proposed revisions would adopt into the SIP state trading program rules codified in Kentucky regulations at 401 KAR 51:240, “Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> annual trading program,” 401 KAR 51:250, “Cross-State Air Pollution Rule (CSAPR) NO<sub>x</sub> ozone season group 2 trading program,” and 401 KAR 51:260, “Cross-State Air Pollution Rule (CSAPR) SO<sub>2</sub> group 1 trading program.” These Kentucky CSAPR state trading programs would be integrated with the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program, respectively, and would be substantively identical to the federal trading programs.<sup>39</sup> If EPA approves these SIP revisions, Kentucky units therefore would generally be required to meet requirements under Kentucky’s CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs. EPA is proposing to approve the September 14, 2018, SIP revisions because they meet the requirements of the CAA and EPA’s regulations for approval of a CSAPR full SIP revision replacing a federal trading program

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<sup>39</sup> As previously discussed in sections III and IV.B.2, under Kentucky’s regulations, the Commonwealth will retain EPA’s default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program.

with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences, as discussed in section IV of this action.

EPA promulgated FIPs requiring Kentucky units to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program, the federal CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program in order to address Kentucky's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS, and 2008 8-hour ozone NAAQS in the absence of SIP provisions addressing those requirements. Approval of the Kentucky SIP submittals adopting CSAPR state trading program rules for ozone season NO<sub>x</sub> and annual NO<sub>x</sub> and SO<sub>2</sub> substantively identical to the corresponding CSAPR federal trading program regulations would satisfy Kentucky's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of these NAAQS in any other state and therefore would correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).<sup>40</sup> Approval of Kentucky's SIP submittal establishing CSAPR state trading program rules for ozone season NO<sub>x</sub> emissions and annual NO<sub>x</sub> and SO<sub>2</sub> emissions therefore would result in automatic termination of the obligations of Kentucky units to participate in the federal CSAPR

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<sup>40</sup> See 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j); *see also* 40 CFR 52.940(a)(1), (b)(2); 52.941(a).



NO<sub>x</sub> Ozone Season Group 2 Trading Program, the federal CSAPR NO<sub>x</sub> Annual Trading Program, and the federal CSAPR SO<sub>2</sub> Group 1 Trading Program.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 17, 2019.

Mary S. Walker,  
Regional Administrator,  
Region 4.